IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.4117 OF 2006
IN
FIRST APPEAL NO.2970 OF 2006

Sanjeeva Doggu Poojari ...Applicant

vs.

Kishanlal Dayashankar Dave ...Respondent

Mr.G.S.Godbole with Mr.S.J.Panikar for the Applicant
Mr.V.R.Walawalkar i/b Mr.Sameer Bhalerkar for the Respondent.

CORAM: A.S.OKA,J.
DATE : FEBRUARY 6,2007.

P.C.:

1. Heard the Advocates for the parties. First Appeal is admitted for final hearing. Therefore, decree for possession will have to be stayed. During the pendency of the suit, the Applicant was appointed as an agent of the Court Receiver. Apart from the suit premises, viz. Shop Nos.1 and 2 described in the paragraph 1 of the plaint in S.C.Suit No.2615 of 1989, admittedly the Applicant was independently occupying the adjoining room which was amalgamated with Shop Nos.1 and 2 for the purpose of carrying on business in the suit premises. The submission of the learned Advocate for the Applicant is that the Respondent claimed on the basis of the deed of adoption which is patently illegal. He submitted that existence of custom was not even pleaded by the Respondent. He, therefore, submitted that interim arrangement which was made during the pendency of the suit may be continued. The learned Advocate for the Respondent submitted that the Trial Court has held

that the Applicant has no independent right in respect of the suit premises. It is held that the Respondent is entitled to the suit premises and therefore the Applicant cannot be the agent of the Court Receiver.

2. Admittedly on Dayashankar Dave was the tenant of the suit premises. The Applicant was conducting hotel business in the suit premises on the basis of an agreement executed by the said Dayashankar. Dayashankar died in 1973. Tenancy was transferred in favour of Janakibai, the widow of Dayashankar. She also executed an agreement in favour of the Applicant. Janakibai expired in the year 1987. The Applicant claims tenancy on the basis of the alleged will of the said Janakibai. The Applicant could not produce the original will in the Trial Court. The Respondent is claiming to be an adopted son of Janakibai and Dayashankar. The Trial Court has held that adoption has been established and the will set up by the Applicant has not been proved. Therefore, there is a decree for possession passed in favour of the Respondent. After having failed in the suit, the Applicant cannot claim to be continued as an agent of the Court Receiver as a matter of right. During the pendency of the Appeal, the appointment of Court Receiver will have to be continued. However, both the parties will be entitled to offer the highest bid to the court Receiver and the Court Receiver will appoint the higher bidder as his agent. It is obvious that the Court Receiver will

continue only in respect of the shop Nos.1 and 2 subject matter of the Appeal and the suit. In the event, if the Applicant is not appointed as an Agent of the Court Receiver, before inducting the Respondent as an agent, the Court Receiver will permit the Applicant to erect a separating wall which was demolished by him so that the Applicant will be continue to be in possession of the adjoining room.

3. Hence, Application is disposed of by passing the following order :

i) Decree for possession will remain stayed till the final disposal of the Appeal.

ii) The appointment of the Court Receiver in respect of the suit premises will continue. The Court Receiver will invite the bids of both the parties and will appoint the highest bidder as an agent of the Court Receiver subject to usual terms and conditions.

iii) In case the Respondent is appointed as an agent of the Court Receiver, the Applicant will be permitted to erect a dividing wall between the tenement independently occupied by him and the suit premises. It is made clear that the Respondent will occupy only the suit premises viz. shop Nos.1 and 2 as an agent of the Court Receiver.

iv) In the event, the Respondent is appointed as an agent of the Court Receiver, appropriate licences will have to be obtained afresh as the present licences stand in the name of the Applicant.

v) Till the time of process of appointing the agent of the Court Receiver is complete, the Applicant will continue to act as an agent of the Court Receiver on the same terms and conditions on which he was appointed during the pendency of the suit.

vi) Application is disposed of in above terms. No order as to costs.

JUDGE